

## Office of the Secretary of Transportation

## § 1.44

than that of the official proposing to act.

[Amdt. 1-114, 41 FR 1288, Jan. 7, 1976, as amended by Amdt. 1-157, 45 FR 83405, Dec. 18, 1980]

### § 1.43 General limitations and reservations.

(a) All powers and duties that are not delegated by the Secretary in this subpart, or otherwise vested in officials other than the Secretary, are reserved to the Secretary. Except as otherwise provided, the Secretary may exercise powers and duties delegated or assigned to officials other than the Secretary.

(b) Except as provided in § 1.42 and subject to paragraph (a) of this section and § 1.44, the Deputy Secretary, the Assistant Secretaries, the Inspector General, the General Counsel, and the Administrators exercise the powers and perform the duties delegated to them under this subpart.

(c) Notwithstanding the provisions of paragraph (a), the delegation of authority in § 1.56b of this title to the Designated Senior Career Official in the Office of the Assistant Secretary for Aviation and International Affairs to make decisions in certain aviation hearing cases is exclusive, and may not be exercised by any other Departmental official, including the Secretary. The Secretary reserves (and delegates to the Assistant Secretary for Aviation and International Affairs) only the authority to make discretionary review of any such decision and to approve it or to remand it for reconsideration by the Designated Senior Career Official, with a full written explanation of the basis for the remand.

[Amdt. 1-157, 45 FR 83405, Dec. 18, 1980, as amended by Amdt. 1-199, 49 FR 50996, Dec. 31, 1984; Amdt. 1-261, 59 FR 10061, 10063, Mar. 3, 1994]

### § 1.44 Reservation of authority.

The delegations of authority in §§ 1.45 through 1.53 and §§ 1.66 and 1.67 do not extend to the following actions, authority for which is reserved to the Secretary or the Secretary's delegatee within the Office of the Secretary:

(a) *General transportation matters.* (1) Transportation leadership authority

under section 4(a) of the Department of Transportation Act (49 U.S.C. 1653(a)).

(2) Functions relating to transportation activities, plans, and programs under section 4(g) of the Department of Transportation Act (49 U.S.C. 1653(g)).

(3) Authority to develop, prepare, coordinate, transmit, and revise transportation investment standards and criteria under section 7 of the Department of Transportation Act (49 U.S.C. 1656).

(4) Authority relating to standard time zones and advanced (daylight) time (15 U.S.C. 260 *et seq.*).

(5) Authority related to national transportation policy under section 3 of the Airport and Airway Development Act of 1970 (84 Stat. 219).

(b) *Legislation and reports.* (1) Submission to the President, the Director of the Office of Management and Budget, or the Congress of proposals or recommendations for legislation, Executive orders, proclamations or reorganization plans or other Presidential action.

(2) Submission to Congress or the President of any report or any proposed transportation policy or investment standards or criteria, except with the prior written approval of the Secretary.

(3) Submission of the annual statement on systems of internal accounting and administrative control under the Federal Managers' Financial Integrity Act of 1982 (Pub. L. 97-255).

(c) *Budget and finance.* (1) Approval and submission to the Office of Management and Budget of original or amended budget estimates or requests for allocations of personnel ceiling (31 U.S.C. 22-24).

(2) Approval of requests for legislation which, if enacted, would authorize subsequent appropriations for the Department (31 U.S.C. 581b).

(3) Transfer of the balance of an appropriation from one operating element to another within the Department (31 U.S.C. 581c).

(4) Submission to the Director of the Office of Management and Budget of requests for the transfer of the balance or portions of an appropriation from one element to another within the Department (31 U.S.C. 665).

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(d) *Interventions and appearances.* Except with respect to proceedings relating to safety fitness of an applicant (49 U.S.C. 1653(e)), the making of decisions on requests to intervene or appear before courts and administrative agencies to present the views of the Department.

(e) *Personnel.* (1) Recommendations to the Civil Service Commission of the allocation of a position to GS-16, 17, or 18 or an equivalent level (5 U.S.C. 5108).

(2) Recommendations to the Civil Service Commission of approval of the qualifications of any candidate for a position at grade GS-16, 17, or 18 or an equivalent level (5 U.S.C. 3324), or to an executive level position.

(3) Recommendations to the Civil Service Commission of a Lump-Sum Incentive Award in Excess of \$5,000 (5 U.S.C. 4502).

(4) Approval of the following actions relating to Schedules A, B, and C and noncareer executive assignment positions or incumbents, except for actions under Schedules A and B limited to one year or less at grade GS-9 or lower, or an equivalent level:

(i) Establishment or abolition of positions;

(ii) Hires;

(iii) Promotions other than quality and periodic within-grade promotions;

(iv) Transfer of personnel to Schedule A, B, or C positions or non-career executive assignment positions, either permanently or on detail; and

(v) Transfer of personnel from Schedule A, B, or C or non-career executive assignment positions to career Civil Service positions.

(5) Approval of employment of experts or consultants.

(6) Authority relating to scientific and professional positions under section 6(a) (5) of the Department of Transportation Act (49 U.S.C. 1655(a)(5)).

(7) Authority to determine the maximum limit of age for appointment of air traffic controllers as provided by 5 U.S.C. 3307(b) (86 Stat. 141).

(8) Authority to develop, coordinate, and issue wage schedules under the Federal Wage system, except as delegated to the Commandant of the Coast Guard at § 1.46.

#### 49 CFR Subtitle A (10-1-02 Edition)

(f) *Security.* (1) Suspension or removal of an employee from a position in the Department for security reasons under Executive Order 10450 (3 CFR, 1949-53 Comp., p. 936) or the employment in the Department of a person who was previously separated for security reasons from any Federal agency.

(2) Authorizing the filling of a critical-sensitive position for a limited period by a person on whom a preappointment full field investigation has not been completed (Executive Order 10450).

(3) Requesting Presidential approval of a claim of executive privilege with respect to information requested by a congressional committee or Member of Congress.

(4) Making determinations prescribed by sections 4(a)(2)(B), 4(b)(3), 5(b), and 9 of Executive Order 10865 (3 CFR, 1959-63 Comp., p. 398) relating to the adjudication and final denial of access to classified information to industry personnel.

(5) Making those determinations or delegations prescribed by sections 2(B) (3), 5(E) (1) and (2) of Executive Order 11652 (37 FR 5209, March 10, 1972) which are reserved to the head of the Department.

(g) *Procurement.* Exercise of the extraordinary authority for defense contracts provided for in Public Law 85-804 (50 U.S.C. 1431-1435), and considerations and decisions on contract appeals and other matters pursuant to the Department of Transportation Contract Appeals Regulations (41 CFR part 12-60).

(h) *Printing.* Requesting approval of the Joint Committee on Printing for any procurement or other action requiring Committee approval.

(i) *Interagency agreements.* Execution of any written interdepartmental or interagency agreement with the head of another executive department or agency.

(j) *Withholding of funds.* Withholding or suspension of Federal-Aid Highway funds on a state-wide basis and the waiver or compromise of such withholding or suspension, except for the administration of 23 U.S.C. 141 and 154, which are specifically delegated in § 1.48(b) (23) and (28) and in § 1.50(i) (1) and (2).

(k) *Alaska Railroad.* Extension or abandonment of railroad service.

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(1) *National Highway Safety Advisory Committee*. Directing the National Highway Safety Advisory Committee to meet (23 U.S.C. 404(c)).

(m) *Coast Guard*. The following powers relating to the Coast Guard:

(1) Appointment of Advisory Committee to the Academy (14 U.S.C. 193).

(2) Fixing date for visit to Academy by Board of Visitors (14 U.S.C. 194(b)).

(3)–(4) [Reserved]

(5) Responsibility for supervising activities of Reserve components (10 U.S.C. 264(b)).

(6) Convening General Courts-Martial under the personal authority granted by law (10 U.S.C. 822(a)(2)).

(7) Approval of execution of a sentence dismissing a commissioned officer or cadet (10 U.S.C. 871(b)).

(8) Approval of vacation of a suspension of dismissal (10 U.S.C. 872(b)).

(9) Establishing procedures for the correction of military records (10 U.S.C. 1552(a)).

(10) Establishing a Discharge Review Board under 10 U.S.C. 1553 and reviewing and taking final action on its findings in the following cases:

(i) Those cases in which a minority of the Board requests that their written opinion be forwarded to the Secretary for consideration;

(ii) Those cases selected by the Commandant to inform the Secretary of aspects of the Board's functions which may be of interest to the Secretary;

(iii) Any case in which the Secretary demonstrates an interest; and

(iv) Any case which the president of the Board believes is of significant interest to the Secretary.

(11) [Reserved]

(12) Substitute administrative discharge for dismissal of an officer under 10 U.S.C. 804 (a) and (b).

(13) Designation of commanding officers and officers in charge who may convene general, special and summary courts-martial. (10 U.S.C. 822(a)(6), 823(a)(7), and 824(a)(4)).

(14) In time of war certify cases to President to extend statute of limitations until after termination of hostilities. (10 U.S.C. 843(e)).

(15) Direct Judge Advocate General to establish branch office. (10 U.S.C. 868).

(16) Designate officers authorized to remit or suspend any part of amount of unexecuted part of any sentence. (10 U.S.C. 874(a)).

(17) Substitute administrative form of discharge for discharge or dismissal executed in accordance with sentence of court-martial (10 U.S.C. 874(b)).

(18) Substitute administrative discharge for previously executed sentence of dismissal when dismissal not imposed at new trial. (10 U.S.C. 875(c)).

(19) Designate persons to convene courts of inquiry. (10 U.S.C. 935(a)).

(n) *Automatic data processing*. Approval authority relating to automatic data processing equipment and services as delimited by DOT 1370.2A, Procurement of Automatic Data Processing Equipment and Services, of 7.22.70.

(o) *Deepwater ports*. The authority to issue, transfer, or amend a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)).

(p) [Reserved]

(q) *Review and finality of actions by Maritime Subsidy Board*. (1) Review of any decision, report, and/or order of the Maritime Subsidy Board, as described in 46 CFR part 202, as amended.

(r) *Approval of cash purchases of passenger transportation*. The authority under FPMR G-72, as amended, to authorize and approve cash purchases for emergency passenger transportation services costing more than \$100.

[Amdt. 1–113, 40 FR 43901, Sept. 24, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.44, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 1.45 Delegations to all Administrators.

(a) Except as prescribed by the Secretary of Transportation, each Administrator is authorized to:

(1) Exercise the authority of the Secretary over and with respect to any personnel within their respective organizations.

(2) Exercise the authority of the Secretary as executive head of a department, under any statute, Executive order or regulation.

(3) Request the Attorney General to approve the award, compromise, or settlement of any tort claim for an